

## **ARTICLE 9**

### **GRIEVANCE PROCEDURE**

In the pursuit of progressive labor-management relations the parties shall make a good faith effort to resolve disputes in the spirit of cooperation and understanding. The parties further agree that the purpose of this grievance procedure is to secure prompt and fair resolution(s) of unresolved disputes.

#### **Section A. General.**

1. A grievance is a written complaint of violation of policy, rules, regulations, conditions of employment, mutually accepted past practices or a violation of law(s) covering Bargaining Unit employees, the provisions of this Agreement or a dispute over its application and interpretation or a claim of discipline without just cause. In a grievance concerning past practice, mutuality shall be one of the issues for the Arbitrator.
2. There shall be no appeal beyond Step Three on initial probationary service ratings or dismissals of initial probationary employees which occur during or upon completion of the probationary period except that grievances alleging unlawful discrimination against a probationary employee may be appealed by the Union to Step Four.
3. Employees shall have the right to present grievances in person or through a Union representative at any step of the grievance procedure, and no further discussion shall be had on the matter until the appropriate Union representative has been afforded a reasonable opportunity to be present at any grievance meetings with the employee(s) and provided further that any settlements reached shall be communicated to the Union and shall not be inconsistent with the provisions of this Agreement.
4. Counseling memoranda, reprimands, and annual performance ratings are not appealable beyond Step Three.
5. All written grievances shall specify if possible: who is affected, date of occurrence, what happened, sections of the Agreement, rules or policy involved, if any, and relief sought. Grievant(s) shall, where possible, make a good faith effort to provide such information in the designated spaces on the grievance form. Grievances that do not contain sufficient information to understand the dispute shall not be returned to the grievant but shall be so indicated by the Employer at the appropriate step of the grievance procedure. The additional information needed shall then be provided if possible at a conference at such step. The grievance shall be presented to the designated supervisor involved in quadruplicate (four copies) on a mutually agreed upon form furnished by the Employer and the Union and signed and dated by the grievant(s).

It shall be the intent of the parties that all grievances and grievance responses contain the necessary information needed to process and resolve complaints as fairly and expeditiously as possible in accordance with this Article.

6. The appropriate Management representative shall, if possible, answer the grievance(s) to the fullest possible extent and shall indicate the basis for the determination.
7. When appealing grievance denials to the next step the appropriate Union representative or grievant shall, if possible, provide a reason why the previous response was rejected and the basis for further appeal.
8. All grievances must be presented promptly and no later than ten (10) week days from the date the employee first became aware or should by the exercise of reasonable diligence, have become aware of the cause of such grievance.
9. It is expressly understood and agreed that the specific provisions of this Agreement take precedence over policy, rules, regulations, conditions and practices contrary thereto.
10. When an individual grievant(s) is satisfied with the resolution of a grievance offered by the Employer, processing the grievance will end.
11. The Union may grieve an alleged violation concerning the application or interpretation of this Agreement. Such grievances shall be filed at the appropriate step by a Council 25 Staff, or Local Union representative, designated by the Local Union President to act in such capacity.
12. Grievances or issues which by nature are not capable of being settled at a preliminary step of the grievance procedure may by mutual agreement be filed at the appropriate advanced step where the action giving rise to the grievance was initiated or where the requested relief could be granted.
13. Group grievances are defined as, and limited to, those grievances which cover more than one (1) employee and pertain to like circumstances and facts for the grievants involved. Group grievances shall, insofar as possible, name all employees and/or classifications and all work locations covered and may be submitted at Step Two or Step Three as appropriate. Group grievances must be so designated at the first appropriate Step of the grievance procedure.
14. The Employer will not release names of grievants or details of grievances in a manner calculated to embarrass a grievant(s).
15. The parties recognize the authority of the Employer to suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause. An employee who alleges that such action was not based on just cause may appeal a demotion, suspension, or discharge taken by the Employer beginning with Step Three (3) of the Grievance Procedure.

16. In the Department of Community Health, employees suspended pending and for the duration of an investigation for abuse or neglect, shall be suspended with pay.
17. Copies of grievances appealed directly to Step Three shall be concurrently sent to the Agency Personnel Officer by the grievant or Union.
18. Informal discussion of complaints between employees and/or stewards and supervisors is encouraged prior to filing of written grievances.
19. In order to achieve settlement and resolution of grievances at the lowest possible step, the parties shall be knowledgeable about and prepared to discuss all the grievances in question. Both parties at meetings at Step Two (2) and above shall have the authority to settle, withdraw, grant or adjust grievances. However, in accordance with current practice, nothing in this Article is intended to preclude the parties at Step One (1) from settling grievances, especially those involving counseling and discipline.
20. At Step Three (3) and above, the signature of a recognized local Union President or Chief Steward and a Council 25 representative affixed to a settlement agreement or notice of withdrawal of a grievance shall be unequivocal cause to cease processing of the grievance. Such a grievance shall not be reinstated except as specified in Article 9, Section C.
21. The parties shall make a good faith effort at all steps in the grievance procedure to attend scheduled meetings and to avoid rescheduling such meetings.
22. Nothing in this Agreement shall prohibit the parties from mutually agreeing to use alternative conference formats such as teleconferencing.

## **Section B. Grievance Steps**

**Step One:** Within ten (10) week days of receipt of the written grievance from the employee(s) or his/her Union representative, the supervisor shall schedule a meeting with the employee(s) and/or his/her Union representative to discuss the grievance, and attempt to resolve the issue. The supervisor shall then return a written decision concurrently to the employee(s) and his/her Union representative within five (5) week days of the meeting.

**Step Two:** If not satisfied with the supervisor's answer in Step One, the grievance, to be considered further, must be appealed to the designated Management representative within ten (10) week days from receipt of the answer in Step One.

The parties shall meet within ten (10) week days of receipt of the grievance at Step Two and attempt to resolve the grievance or reach a settlement. As the Step Two Management representative may elect, the supervisor may attend such meeting. If a settlement is reached, such settlement shall be confirmed in writing and signed by both parties. If settlement is not reached, a written answer will be placed on the grievance

form by the appropriate Management representative and returned concurrently to the employee(s) and his/her Union representative within ten (10) week days from the Step Two meeting.

Upon mutual agreement at the Local level all pending grievances shall be discussed at such meetings. At the option of the Local Union representative, the grievant shall not attend the conference.

**Step Three:** If not satisfied with the Employer's answer in Step Two, to be considered further, the grievance must be appealed to the departmental Appointing Authority or his/her designee within ten (10) week days from receipt of the answer in Step Two. For disciplinary grievances involving suspension, discharge, or demotion, the Employer representative shall meet within twenty-five (25) week days of the appeal unless mutually extended by the Employer representative and Council 25 representative with the employee(s) and his/her Local Union Representative and a representative of Council 25 (as Council 25 may elect) to discuss and attempt to resolve the grievance or reach a settlement. Such meetings shall normally be held at the Agency where the grievance originates. If a settlement is reached, such settlement shall be confirmed in writing and signed by both parties. If a settlement is not reached, the written decision of the Employer will be placed on the grievance form by the departmental Appointing Authority or his/her designee and returned concurrently to the grievant(s), his/her Union representative and Council 25 representative within twenty-five (25) week days from the date of the meeting at Step Three. Upon mutual agreement, such grievances may be discussed in the Step Three settlement conferences indicated in the next paragraph.

For grievances pertaining to all other disputes, a meeting shall be held within twenty-five (25) week days of the appeal unless mutually extended by the Employer representative and Council 25 representative between the departmental Appointing Authority or designee, a local Management representative (as the departmental Appointing Authority may elect), a Local Union representative (not the grievant) and a representative of Council 25 (as Council 25 may elect). Such meetings shall be held in Lansing unless mutually agreed otherwise. Every effort shall be made to discuss all pending grievances at such meetings to conserve Union and Management staff and employee work time. Every effort shall be made at such meetings to arrive at fair and equitable grievance settlements to avoid the necessity of arbitration. Such settlements, if reached, shall be confirmed in writing when agreed to by the Employer and the Union. If settlement is not reached, the written decision of the Employer will be placed on the grievance form by the departmental Appointing Authority or designee and returned to the grievant(s), his/her Union representative and Council 25 representative within thirty (30) week days from the date of receipt of the grievance form at Step Three.

**Step Four:** If not satisfied with the Employer answer in Step Three, the Union may appeal the grievance to arbitration by assigning an arbitrator from the panel as provided in Section C. within thirty five (35) week days from the date of the Department's answer in Step Three. The arbitrator shall be selected from a panel of arbitrators agreed upon by the parties and the hearing conducted under the rules of the American Arbitration Association, except as otherwise provided for in this Agreement. A copy of the

arbitration demand sent to Council 25 shall be served upon the Department Representative by Council 25 with a date stamp showing the date it was received by Council 25. If an unresolved grievance is not timely appealed to arbitration, it shall be considered terminated on the basis of the Department's Step Three answer without prejudice or precedent in the resolution of further grievances. The parties may propose consolidation of grievances containing similar issues.

When felony charges have been made against the employee, the arbitration may be placed "on hold" pending the outcome of the initial court decision or award.

For non-disciplinary grievances a representative from the Office of the State Employer and Council 25 shall meet upon written request of either party to review identified outstanding grievances which have been appealed to arbitration. The purpose of this meeting is to find resolution for those grievances and arrive at fair and equitable settlements to avoid the necessity of arbitration. All settlements shall be confirmed in writing when agreed to by Council 25 and the Office of the State Employer.

Upon acceptance of the appointment, the Arbitrator shall have jurisdiction and authority to move the case to final and timely resolution, and shall be advised in writing of the terms and conditions of this article. Requests for postponement may be denied, and shall be granted only for cause. The Arbitrator shall schedule the hearing to be held within six (6) months of appointment, unless the parties mutually agree to extend the hearing date. If an arbitration is not held within one (1) year from the initial filing date of the grievance to arbitration, and the request to extend beyond one year is made by the Union, the issue of liability to the Employer shall be an issue for the Arbitrator's consideration. The initial burden of proof shall be on the Union to show sufficient cause to extend the arbitration hearing. The only exceptions to this shall be for initial felony charges, as noted above, and for Workers' Compensation cases.

The expenses and fees of the Arbitrator, and the cost of the hearing room, excluding a court reporter if requested by only one of the parties, will be shared equally by the parties. The Arbitrator shall only have the authority to determine compliance with the provisions of this Agreement. The Arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement and Civil Service Rules and Regulations. The authority of the Arbitrator shall remain subject to and subordinate to the limitations and restrictions on subject matters and personal jurisdiction in the Civil Service Rules and Regulations. The Arbitrator shall not make any award which in effect would grant the Union or the Employer any rights or privileges which were not obtained in the negotiation process. The standard of proof to be considered by the Arbitrator shall be based upon a preponderance of evidence on the whole record. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. No monetary award may be made for attorney fees, witnesses fees, costs, interest, or other expenses arising out of, or attributable to, the grievance appeal.

Except as provided in Civil Service Rules and Regulations, the decision of the Arbitrator will be final and binding on all parties to this Agreement. Arbitration decisions

shall not be appealed to the Civil Service Commission, except as may be provided by the Civil Service Rules and Regulations. When the Arbitrator declares a bench decision, such decision shall be rendered in writing within fifteen (15) calendar days from the date of the arbitration hearing. The written decision of the Arbitrator shall be rendered within thirty (30) calendar days from the closing of the record of the hearing. A copy of the decision and a disc shall be sent to the management representative, the Office of the State Employer contract administrator and Council 25, if available from the arbitrator.

If an arbitration hearing has been scheduled except in a case involving a grievance settlement, the party requesting a cancellation, postponement or rescheduling of the arbitration hearing shall be responsible for the Arbitrator's fees, if any.

No settlement (bilateral agreement) reached at any stage of the grievance procedure, except an arbitration decision, shall be a precedent in any arbitration and shall not be admissible as evidence in any future arbitration proceeding unless mutually agreed to otherwise.

### **Section C. Panel Selection and Administration.**

Within thirty days after approval of this Agreement and annually thereafter, Council 25 and the Office of the State Employer shall simultaneously exchange the names of ten labor arbitrators (who are members of the National Academy of Arbitrators, or on the American Arbitration Association, the Federal Mediation and Conciliation Service or Michigan Employee Relations Commission Rolls). Each party shall then have the right to strike five names from the other party's list. The remaining names shall be the pool of arbitrators to be used for all grievances. Should a selected arbitrator decline to serve on the panel, the party proposing the name may submit another name as part of the ten arbitrators to be considered by the other party. Should this process result in a panel of less than ten, the parties will only strike four names from each other's list.

Once the panel is established the names will be listed in alphabetical order. Assignments shall be in a rotational order beginning with the first name for education, the second name for Military & Veterans Affairs, the third name for Community Health, the fourth name for Corrections, the fifth name for Family Independence Agency, the sixth name for State Police, the seventh name for Natural Resources, and the eighth name for Career Development. Council 25 will maintain a separate list for each department.

A copy of the notice to the arbitrator shall be provided to the department, Office of the State Employer and Council 25. Copies of the grievance, and answer(s) shall be sent to the arbitrator after he/she is selected.

### **Section D. Time Limits.**

Grievances may be withdrawn once without prejudice at any step of the grievance procedure. A grievance which has not been settled and has been withdrawn may be

reinstated based on new evidence not previously available within twenty-five (25) week days from the date of withdrawal.

The parties may mutually agree in writing to “hold” a grievance pending the outcome of an arbitration or an appeal in another forum (i.e. Workers’ Compensation). Once a decision has been rendered, such grievance may be reactivated within twenty-five (25) week days from the date of the decision.

“Week” days are defined as Monday through Friday excluding contractual holidays.

Grievances not appealed within the designated time limits in Steps Two or Three of the grievance procedure will automatically result in the grievance being considered closed. Grievances not answered by the Employer within the designated time limits in any step of the grievance procedure shall be considered automatically appealable to the next step. Where the Employer does not provide the required answer to a grievance within the time limit provided at Steps One, Two and Three, the time limits for filing at the next step shall be extended for ten (10) additional week days. The time limits at any step or for any hearing may be extended by written mutual agreement of the parties involved at that particular step.

In the event a grievance is rejected by the Employer at any step as untimely, the issue shall be treated as separate and distinct at Step Four. Such issue shall be addressed by the submission of briefs to an Arbitrator. A decision by the Arbitrator shall be made prior to the merits of the existing grievance being heard.

If the Employer representative with whom a grievance appeal must be filed is located in a city other than that in which the grievance was processed in the preceding step, the mailing of the grievance appeal form shall constitute a timely appeal if it is postmarked within the appeal period. Similarly, when an Employer answer must be forwarded to a city other than that in which the Employer representative works, the mailing of the answer shall constitute a timely response if it is postmarked within the answer period.

#### **Section E. Retroactivity.**

Settlement of grievances may or may not be retroactive as the equities of the particular case may demand as determined by the Arbitrator. In any case where it is determined that the award should be applied retroactively, except for administrative errors relating to the payment of wages, the maximum period of retroactivity allowed shall be a date not earlier than one hundred and eighty (180) calendar days prior to the initiation of the written grievance in Step One. Employees who voluntarily terminate their employment will have their grievances immediately withdrawn but may benefit by any later settlement of a group grievance. Such employees may continue to pursue grievances concerning suspension, demotion, or denial of Public Acts 414, 280 or 232 benefits.

## **Section F. Exclusive Procedure.**

The grievance procedure set out above shall be exclusive for all grievances permitted under Civil Service Rules and Regulations. The grievance procedure set out above shall not be used for the adjustment of any dispute for which the Civil Service Rules or Regulations require the exclusive use of a Civil Service forum or procedure. All grievances filed prior to the effective date of this Agreement must be considered by the Arbitrator only under the provisions of the previous Agreement as though that Agreement were still in effect.

## **Section G. Processing Grievances.**

Prior to a mutually scheduled meeting with management at each step of the grievance procedure, the grievant and his/her designated Steward will be permitted a reasonable amount of time, not to exceed one-half (½) hour, without loss of pay for consultation and preparation for such grievance meeting, during their regularly scheduled hours of employment. Overtime is not authorized.

One designated Steward will be permitted to process a grievance without loss of pay. In a group grievance, two (2) grievants shall be entitled to appear without loss of pay.

Grievance meetings as provided for in Step One (1) shall normally be held during the regularly scheduled hours of employment of the grievant. Grievance meetings as provided for in Step Two (2) shall normally be held during the regularly scheduled hours of employment of the grievant or, if the grievant works an afternoon or night shift, as conveniently as possible to the employee's shifts and normally immediately preceding or immediately following an employee's shift. For purposes of pay only, one (1) Local Union representative and the grievant(s) shall be permitted an equivalent amount of time off from scheduled work in accordance with Article 8, Section B. for grievance meetings as provided for in Step Three and for arbitration hearings. Such employees shall be placed on annual leave for this purpose. The annual leave shall be converted to administrative leave once it is determined how much time was involved in the meeting or hearing. The Employer is not responsible for compensating any employees for time spent processing grievances outside their regularly scheduled hours of employment. Unless mutually agreed otherwise, the Employer is not responsible for any travel or subsistence expenses incurred by grievants or Stewards in processing grievances.

The issue of agencies where no Steward or Chief Steward is selected because of the small number or scattered distribution of Bargaining Unit employees and the option of waiving Steps One and Two in the grievance procedure shall be an appropriate subject of secondary negotiations in the Department of Corrections. Further, the issue of a Chief Steward, Steward, or Alternate Steward from the jurisdictional area where the conference is to be held and his/her ability to represent the grievant at Step One (1),



Two (2), or Three (3) without loss of pay or benefits shall also be an appropriate subject for secondary negotiations in the Department of Corrections.

#### **Section H. Documents and Witnesses.**

Upon written request, the Union shall receive all documents or records which the Employer intends to enter into evidence in the arbitration, in accordance with or not prohibited by law, and pertinent to the grievance under consideration. Discretion permitted under the Freedom of Information Act shall not be impaired by this Section. Documents requested under this Section shall be provided in a timely manner if the Employer intends to use such documents as evidence. Upon written request, the Employer shall be entitled to disclosure of all documents the Union intends to offer in arbitration. Failure by either party to disclose a document shall make it inadmissible in arbitration.

At least ten (10) calendar days before a scheduled arbitration hearing, the parties shall provide to each other a written list of the witnesses each plans to call. If a witness list is not timely provided, the Employer shall release the requested witnesses subject to annual leave buy back. Witnesses which the Union intends to call will be relieved from duty. Nothing shall preclude the calling of previously unidentified witnesses.

Employees required to testify will be made available without loss of pay subject to the timely provision of a witness list; however, whenever possible, they shall be placed on call to minimize time lost from work. Employees who have completed their testimony shall return promptly to work when their testimony is concluded unless they are required to assist the principal Union representative(s) in the conduct of the case. The intent of the parties is to minimize time lost from work.

#### **Section I. State Employer.**

Nothing in this Article shall preclude representatives of the Office of the State Employer from attending any grievance conferences or arbitrations. In the event that problems arise in the application of this Article a meeting will be held at the request of either party between a representative of Council 25 and a representative of the Office of the State Employer to attempt to resolve such problems.